

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
	)	Case No. 09-50026 (REG)
MOTORS LIQUIDATION	)	
COMPANY, et al	)	Honorable Robert E. Gerber
f/k/a/ General Motors Corp.	)	
Debtors.	)	
	)	
	)	
	)	

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**ORDER REGARDING BENJAMIN PILLARS' NO STAY PLEADING AND  
RELATED PLEADINGS**

Upon consideration of the pleadings filed by BENJAMIN W. PILLARS, as Personal Representative of the estate of KATHLEEN ANN PILLARS, deceased, including the No Stay Pleading, [Docket Entry #13166] along with the subsequent Objection Pleading, [Docket Entry #13238] and the No Dismissal Pleading [Docket Entry #13239] and the responses filed by GENERAL MOTORS LLC to said pleadings [Docket Entry #13191 & 13283] and the parties through their counsel having appeared before this Court for oral arguments on Thursday, July 16, 2015, and the Court having considered the arguments raised at said hearing along with the written submissions and the Court being fully advised as to the positions of each party and for the reasons stated on the record at the conclusion of the hearing (as reflected in the corrected transcript attached):

IT IS HEREBY ORDERED that the relief sought by the estate of Kathleen Ann Pillars is hereby GRANTED. The stay imposed by the Judgment, dated June 1, 2015, entered by the Court [Docket Entry # 13177] (to the extent, but only the extent, it relates to the lawsuit brought by the estate of Kathleen Ann Pillars against General Motors LLC)

is hereby lifted and said lawsuit<sup>1</sup> may proceed against General Motors LLC. The relief set forth in this order is limited to the lawsuit brought by the estate of Kathleen Ann Pillars, and shall have no bearing on any other lawsuit, action or proceeding.

Dated: New York, New York  
July 29, 2015

*s/ Robert E. Gerber*  
UNITED STATES BANKRUPTCY JUDGE

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<sup>1</sup> A complaint and then an amended complaint against General Motors LLC was filed by estate of Kathleen Ann Pillars in Michigan's Bay County Circuit Court with a state court file number of 15-3159 and said cause of action was subsequently removed to the United States District Court for the Eastern District of Michigan, Northern Division by General Motors LLC with a district court file number of 1:15-cv-11360-TLL-PTM.

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 09-50026-LAS

4 - - - - -x

5 In the Matter of:

6 MOTORS LIQUIDATION COMPANY

7 Debtor.

8 - - - - -x

9 United States Bankruptcy Court

10 One Bowling Green

11 New York, New York 10004-1408

12

13 July 16, 2015

14 9:48 AM

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22 B E F O R E:

23 HONORABLE ROBERT E. GERBER

24 U.S. BANKRUPTCY JUDGE

25 ECRO: K. HARRIS



1 Hearing Re: No Stay Pleading

2

3 Hearing Re: Motion to Strike Certain Documents Contained in  
4 Appellants' Designation of Items to be Included in the Record  
5 on Appeal

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25 Transcribed by: Theresa Pullan

1 A P P E A R A N C E S :

2

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24

25 MR. WEISFELNER

P R O C E E D I N G S

THE COURT: I want to get appearances, and then I have some comments.

MR. BABCOCK: Good morning, Your Honor, Russell Babcock, I'm here on behalf of the estate of Kathleen Pillars.

THE COURT: Mr. Babcock that is.

MR. BABCOCK: Yes.

THE COURT: Okay. I thought I saw a different name on the papers, Mr. Babcock.

MR. BABCOCK: Yes, Mr. <sup>Mastramarcos</sup> ~~Markell~~ is a lawyer, while he is a partner of the firm I am employed with, I filed an appearance too so I could argue the motion today.

THE COURT: Okay, sure. Mr. Steinberg.

MR. STEINBERG: On behalf of the New General Motors, and I'm with Mr. Davidson.

THE COURT: Okay. Folks, you don't need me to tell you about the similarities between this case and Deutsch. But there is a twist in it that I need you to address which neither of you dealt with as directly as I would have liked in the papers.

Mr. Babcock, Mr. <sup>Mastramarcos</sup> ~~Markell~~'s brief recognized my earlier ruling in Deutsch which is quite obviously directly on point. And he tried to get around that, not by saying that Deutsch was improperly decided, but relied on a different kind of argument, although he didn't use what I would have thought

1 would be the right words to describe it.

2 The premise was that because whoever had filed the  
3 removal petition in the answer in the State Court action which  
4 I think was <sup>in</sup> Michigan, certainly wasn't in this district, had  
5 relied on the earlier version of the sale agreement. <sup>It</sup> We had  
6 apparently said <sup>"Execution Copy"</sup> but was amended by <sup>a</sup> our first  
7 <sup>Amendment</sup> amended filed on June 30th, 2009, <sup>T</sup> that this might be an  
8 "occurrence even though I had <sup>held</sup> moved in Deutsch that the death of  
9 a victim after a car wreck wasn't either an accident or an  
10 incident. But you didn't flesh out the law of, didn't mention  
11 the key words, judicial estoppel, trying to rely on some kind  
12 of admission.

13 And it seems to me in essence what you and Mr.  
14 Mastramarco are asking me to do is to rely on a wrong version  
15 of the sale agreement. <sup>we</sup> I got a couple of problems with that:  
16 a) I didn't know how a guy in my position could responsibly  
17 rely on what he knows to be the wrong agreement, and as a  
18 matter of Second Circuit law, <sup>I thought</sup> it's not unique to the  
19 Second Circuit because the Supreme Court has said it as well,  
20 To make out judicial estoppel, you need to have a couple of  
21 things: one is materially different statements, and second,  
22 reliance by the tribunal on the statement by the opponent.  
23 New GM used the wrong language as far as I can tell.  
24 I will allow Mr. Steinberg to be heard if he wants to correct  
25 me on that, but it wasn't materially wrong at least at the



1 time, and more importantly, there's no reliance by me on that,  
2 and then third, of course, what the agreement says is the *best*  
3 evidence of what it says, not what a lawyer says about what the  
4 agreement says. So I need help from you on that.

5           Conversely, Mr. Steinberg, I'll need some help from  
6 you as to why either [indiscernible] there seemed to be  
7 reliance on the old language rather than the new, and why the  
8 issue that I just articulated wasn't raised. Once I rely on  
9 the proper language in the agreement, and I got to tell you Mr.  
10 Babcock that I think you'd have to throw a Hail Mary to  
11 convince me that I should rely on the wrong language. So you  
12 can tell me whether you think Deutsch was wrongly decided, and  
13 materially wrongly decided, being mindful of what I said in  
14 quite a number of published decisions, that the interest of  
15 predictability in the Southern District of New York is of great  
16 importance and that the absence of manifest error I follow the  
17 decisions, *in* *of fellow* I follow bankruptcy Judges in this district, and of  
18 course I follow my own.

19           So strictly speaking, it's your motion, Mr. Babcock,  
20 so I'll hear from you first, and then Mr. Steinberg, with the  
21 usual reply.

22           MR. BABCOCK: Your Honor, Russell Babcock here on  
23 behalf of the estate of Kathleen Pillars. I guess the problem  
24 as we see it from the New GM's perspective is that parties can  
25 and do quite often waive defenses or arguments that they may



1 otherwise have. Why do I think that's important here? Your  
2 Honor, there has been no evidence to suggest that this was an  
3 error on the part of New GM. New GM like anyone can take on  
4 whatever obligations they want to. If they want to rely on  
5 different contractual language they can do so. And in fact,  
6 that takes it outside the purview. We're not asking the Court  
7 here to make any changes to its rulings as to these, as to the  
8 subsequent agreements. We're saying that New General Motors  
9 has made admissions, in fact they've even used the words  
10 admissions in their complaint, and not just once, Your Honor,  
11 in paragraph 17, but I mean paragraphs 22, 27, 29, 31 through  
12 34, 36, 37, 39 through 44, 46 and onward. There's at least 40  
13 times where they make the same admission or incorporate the  
14 same admission I should say.

15 And for them to come in here, and this case as Your  
16 Honor pointed out was *in the* an Eastern District of Michigan under  
17 Sixth Circuit rules, courts, parties, are bound by the statements  
18 of their attorneys and especially in the context of pleadings.  
19 As Your Honor is well aware, *under the* of Federal Rules of Civil  
20 Procedure, when you answer a complaint you either make a denial  
21 or an admission. In this case they made an admission, and not  
22 only that but they made it in the notice as well. There's been  
23 no authority cited by New GM which disputes what I've just  
24 said. They say we didn't really mean it. That's not  
25 authority, that's an unsupported assertion.

1 And then, Your Honor, I guess with regards to the,  
2 and I guess I want to make sure we flush out the Deutsch  
3 opinion. There is a couple of key language that appeared in  
4 the subsequent version that I think is important, besides the  
5 fact that it did not have or other distinct and discrete  
6 occurrences which the court noted in its opinion. Also in the  
7 version that New GM is not relying upon in this particular  
8 context, in this particular case, it doesn't have the first  
9 occurring language which also the Court found important in the  
10 Deutsch opinion as well.

11 THE COURT: Doesn't first occurring appear in both  
12 versions?

13 MR. BABCOCK: Not in the excerpt that they've, well  
14 see they did quote the language they're relying on in their  
15 answer. And in fact if you look at paragraph, page 4 to  
16 exhibit 2 to their notice of removal, they quote the language  
17 that they're standing --

18 THE COURT: My bundle doesn't include that document.  
19 Can you hand up what you're making reference to after showing  
20 it to Mr. Steinberg?

21 MR. BABCOCK: Sure, I can hand you this document,  
22 Your Honor.

23 THE COURT: And this is from the removal petition?

24 MR. BABCOCK: Yeah, it's from the removal. May I  
25 approach the bench, Your Honor?

1 THE COURT: Yes sir.

2 MR. BABCOCK: Okay. That language is from the page 4  
3 of the notice of removal. And as Your Honor can see, the  
4 language that they're representing to the District Court of the  
5 Eastern District of Michigan is this is what controls the  
6 situation from our perspective. And --

7 THE COURT: Give me a second to read it. Was  
8 withdrawn by a Thomas P. Branigan of Bowman and Brook in  
9 Bloomfield Hills, Michigan, attorney for New GM.

10 MR. BABCOCK: And I believe Your Honor --

11 THE COURT: Do you need this back?

12 MR. BABCOCK: I was going to reference it, Your  
13 Honor. I can get -- all right. And again, Your Honor, if you  
14 don't have, I apologize if you didn't get these documents, Your  
15 Honor. And again, Your Honor, in paragraph 17 to the answer to  
16 our amended complaint, now, that was marked I believe -- hold  
17 one second here -- as exhibit 4 to our pleading, I don't know  
18 if Your Honor has that as well. It says here, and I think it's  
19 the same language. It says: "all liabilities to third parties  
20 for death, personal injury or other injury to persons or damage  
21 to property caused by motor vehicles designed for operation on  
22 public roadways or by the component parts of such motor  
23 vehicles and, in each case, manufactured, sold, or delivered by  
24 sellers (collectively) "product liabilities" which arise  
25 directly out of accidents, incidents -- excuse me -- accidents,



1 incidents or other and discrete occurrences that happened or  
2 after the closing date, July 10, 2009 and arise from such --

3 THE COURT: What are you reading from, Mr. Babcock?

4 MR. BABCOCK: I'm reading from, this is the quote  
5 from paragraph 17 to New GM's answer to the amended complaint.  
6 And again, and arise from such motor vehicles' operation or  
7 performance. That's the language, Your Honor, that New GM  
8 represented to the District Court for the Eastern District, not  
9 once but on two separate occasions, two separate pleadings.

10 And when Your Honor considers the fact that they  
11 acknowledge in paragraph 17 that this is what they state, GM  
12 LLC admits it ultimately did assume certain liabilities,  
13 including the following as provided in section 2.3 (a) (ix) of  
14 sale agreement. That's where the quote that I just read you  
15 comes from. That's what they're relying upon, and that was  
16 from attorney Tomas Branigan from Bowman and Brook LLP on  
17 behalf of New General Motors.

18 So, Your Honor, the reason we're here, and this is  
19 kind of, I mean I'm not aware of any other case where New GM  
20 decided to take this approach. This is a situation where in  
21 the context of this case, New General Motors made a decision to  
22 take a certain position, and as we've pointed out in responding  
23 to that position, the language that they're relying upon  
24 provides broader liability and <sup>exposure</sup> ~~explore~~ to New GM in the case  
25 which covers, in the case of my client's claim at least than

1 what may or may not have been accomplished in subsequent  
2 agreements, but they're not relying on the subsequent  
3 agreements in the case before the United States District Court  
4 Eastern District of Michigan which is where this case was  
5 removed by New GM.

6 So, Your Honor, we cited Sixth Circuit cases that  
7 would explain why the Court in that case in that venue would  
8 why those statements are dispositive to New GM. There's been  
9 no authority cited to the contrary. And then in --

10 THE COURT: Do I have the Sixth Circuit rule that  
11 you're relying on in the record?

12 MR. BABCOCK: Basically the Federal Rule of Civil  
13 Procedure Rule of pleading plus the two cases I was talking  
14 about, the two cases talking, which are Barnes and the McDonald  
15 opinions which appear in that no state pleading, and we cite to  
16 them. On page 4 of our brief, Barnes vs. Owens Corning Fiber  
17 Glass Corporation which is 201 F.3d 815 and page 829 is  
18 referenced specifically as the Sixth Circuit 2000 opinion.  
19 There's another one, McDonald vs. General Motors Corporation,  
20 110 F.3d 337, 340 Sixth Circuit 1997. Again talking about the  
21 impact of admissions made by attorneys or defendants of parties  
22 in the course of litigation.

23 And again, Your Honor there's been no authority cited  
24 by New GM that disputes that. They say we don't really mean  
25 it. I take it as simply being buyer's remorse on their part

1 now that they, that the consequences of their position has  
2 become apparent now more willing to consider the impact to  
3 there is any form their opinion with regard to this Court's  
4 ruling rather than their own admissions earlier on.

5 THE COURT: Mr. Babcock, did the Pillars family file  
6 a claim against Old GM where its trust, back in the time when  
7 claims could still be filed?

8 MR. BABCOCK: Your Honor, that's the tragedy of the  
9 situation. My client was in an automobile, the estate, the  
10 decedent was in an automobile accident in 2005. She was in a,  
11 she was incapacitated until her death in 2000, I believe it was  
12 in 2012, Your Honor. And an estate was formed back in 2014.

13 THE COURT: Was there any kind of guardian or  
14 anything appointed for her in the time between the wreck and  
15 the time of her passing?

16 MR. BABCOCK: Not to my knowledge, Your Honor. In  
17 fact, the appointment took place in 2014. She had a, she had  
18 a, she was married at the time of the accident, and she was  
19 being taken care for in basically a vegetative state from my  
20 understanding at least up to the point of her death. And so  
21 that's what, and so that's what I think is the most, the tragic  
22 part about all this. New GM wants to be excused for its  
23 conduct and its statements and its actions it's made in front  
24 of Federal District Court in Michigan. But yet they want to  
25 penalize my client for something that they did when they did



1 nothing wrong. They were accused of, the decedent was a victim  
2 of a car accident. Her wrongful death did not occur until  
3 2012. A wrongful death statute claim could not have been  
4 brought until her death, it goes without saying, and thus New  
5 GM is saying sorry, you're out of luck. And but yet they want  
6 this Court, to come in here and say on the other hand what we  
7 say and what we do doesn't matter. And that is where, that's  
8 where -- again, this is not going to have any impact on the  
9 ruling from this Court today on this issue that we're bringing  
10 to the Court's attention, will have no impact on the bankruptcy  
11 estate. In fact, quite the contrary, New GM's agreed to take  
12 on the additional liability which might otherwise went to the  
13 old bankruptcy.

14 THE COURT: Well you're not pressing that  
15 jurisdictional argument that I rejected I don't know how many  
16 times in the cases that that lawyer Gary Peller brought.  
17 You're simply saying that letting your client bring a wrongful  
18 death case against New GM isn't that big a deal?

19 MR. BABCOCK: Because this is just one case, Your  
20 Honor. This is, the admissions that they made in this  
21 particular case, the position that they took in this particular  
22 case involves only this particular case. It does not involve  
23 or require this Court to make any adjustments to any of its  
24 earlier rulings because --

25 THE COURT: I understand.



1 MR. BABCOCK: Yeah, so that's kind of where we're  
2 coming from, Your Honor. And again I think it's also  
3 important, that the defendant, that New GM I should say doesn't  
4 provide any explanation as to this additional changed language,  
5 the occurrence language that we already quoted. The fact that  
6 there is no first occurrence language in the portion that  
7 they're relying upon, the United States District Court Eastern  
8 District of Michigan, none of that is being challenged. They  
9 haven't said that we're not correct on our interpretation of  
10 that occurrence and or the fact that it says or other distinct  
11 occurrences. They don't challenge any of that, Your Honor.  
12 They just say, well Your Honor made the rulings. Well Your  
13 Honor did make the rulings, and as you pointed out in the  
14 Deutsch opinion, you were, the issue in that case was whether  
15 or not accidents and incidences were, you had to deal with  
16 those particular terms.

17 And yet as you point out in your opinion that this  
18 occurrence issue wasn't even a part of it, so there was no  
19 reason to get into it. And as you pointed out in that case, no  
20 one bothered even to discuss it. And in this case we are  
21 discussing it. We've provided evidence, we provided definition  
22 term, definition for this, for this terminology. I think that,  
23 and the fact that the other additional language as we point out  
24 further supports the fact that what we have here is a much  
25 broader language.

1 So I guess with regards to this issue about the  
2 Deutsch opinion, I guess as a representative of a victim of  
3 these accidents, I would take the position even though I don't  
4 think that the Court needs to get to this point because I don't  
5 think you need to reverse yourself and Deutsch at all or even  
6 clarify it to give us the relief we're asking for today. But  
7 if push comes to shove, I guess and for the purpose of  
8 preserving it for the record, I guess in addition to the  
9 arguments made by the lawyers for that, for the estate in that  
10 case, I guess the way I read the terminology with all due  
11 respect to the Court is that you basically came down to  
12 "accident" or "incident" meaning at least in my opinion and how I  
13 took it, and maybe I'm wrong about this, is being the same  
14 thing. But I think that we don't need to go there. I think  
15 that the Court can grant the relief that we've already asked  
16 for to the mechanism I've already explained.

17 Unless Your Honor has any questions, and I guess,  
18 they have brought up these other issues about, and I just got  
19 these, I got these when I came back from vacation yesterday,  
20 about the responses to the [indiscernible] and the objection  
21 where they make the additional argument about the, whether this  
22 is, whether this is an ignition system. I guess we look at  
23 paragraph 4 to their answer to the complaint, they kind of tie  
24 it all together, they say this is all, ours is the same as  
25 everyone else's as far as the recall problem. And so I guess,

1 I don't think we need to go there because if you grant the  
2 relief we asked for at the very beginning, all this additional  
3 stuff becomes academic.

4 THE COURT: You're saying if I grant the relief you *ive*  
5 still got to prove your case in Michigan State Court or  
6 Michigan Federal Court?

7 MR. BABCOCK: Sure. Of course we would have to, we  
8 would have to prove the underlying case against New GM, the  
9 claims itself, yes. Unless Your Honor has any questions.

10 THE COURT: No, thank you. I want to hear from Mr.  
11 Steinberg.

12 MR. STEINBERG: Your Honor, I think the most  
13 fundamental point to start is that this lawsuit was improperly  
14 brought. It was in violation of Your Honor's sale order and  
15 injunction, and that it was a violation of the injunction to  
16 start. That actually is the starting point. Under the *Celotex* ~~Seletex~~  
17 ~~(phonetic)~~ decision which we've cited to, Your Honor, many  
18 times that if there was any confusion, they were required to  
19 come in. Your Honor's Deutsch decision had been decided over  
20 three years ago, and they brought this lawsuit anyway. And  
21 they're arguing that some local counsel for New GM in the  
22 context of trying to get this to the JPML for purpose of then  
23 moving it to the MDL cited to the wrong version of the sale  
24 agreement.

25 THE COURT: He was a lawyer for New GM, wasn't he?



1 MR. STEINBERG: Yes he was.

2 THE COURT: And I don't know if it matters because  
3 over 45 years I've learned a little bit about <sup>g</sup>the agency, but  
4 isn't there somebody at the national level that supervises  
5 local counsel?

6 MR. STEINBERG: I'm sure that in the context of this  
7 wave of lawsuits there was more than the local counsel just  
8 doing this. I think, Your Honor, that this was a mistake that  
9 was made.

10 THE COURT: It plainly was. And the consequence is,  
11 the question is, who should bear the consequences of that  
12 mistake?

13 MR. STEINBERG: But I don't think there's any  
14 reliance on anything here. First you start with an improperly  
15 brought --

16 THE COURT: Well that was the way I started, Mr.  
17 Steinberg, because more likely if not plainly we don't have a  
18 judicial estoppel, but Mr. Babcock makes a different point, he  
19 asserts a judicial admission that's contrasted to a judicial  
20 estoppel by reason of the fact that when people answer  
21 complaints we hold people to what they say.

22 MR. STEINBERG: People amend their answers all the  
23 time. And what was the admission that other than it was just a  
24 mistake? Because at the end of the day if we had asserted the  
25 old agreement and they had not refuted it, then are we all

1 governed by the old agreement instead of what was the governing  
2 agreement that applies to everybody in this case? The fact of  
3 the matter is there's an underlying agreement that governed  
4 this circumstance, the underlying agreement was the first  
5 amendment. That first amendment --

6 THE COURT: I didn't see much reference to that in  
7 your brief either, or attention to the distinction.

8 MR. STEINBERG: I think the, with regard to my brief  
9 --

10 THE COURT: Unless I read the wrong brief.

11 MR. STEINBERG: No, no, I think we say that the fact  
12 that there was a citation to the old amendment shouldn't change  
13 what the controlling law is and I think we put that in a  
14 sentence there.

15 THE COURT: In --

16 MR. STEINBERG: In our response.

17 THE COURT: 12 page response, it was pretty buried if  
18 it was stated.

19 MR. STEINBERG: Yes. If you can bear with --

20 THE COURT: You mean [indiscernible] reliance on  
21 subject matter jurisdiction and due process. Where is the  
22 discussion of judicial or admissions or estoppels?

23 MR. STEINBERG: I think, well I think Your Honor on  
24 page 7, footnote 5, New GM may have inadvertently referred to  
25 the original language contained in section 2(b)(3)(b)(9) of the

1 sale agreement --

2 THE COURT: I see. All right.

3 MR. STEINBERG: -- and certain pleadings filed in the  
4 underlying lawsuit, the language contained in the first  
5 amendment with respect clearly governs this matter. Perhaps we  
6 didn't give it the attention that Your Honor wanted us to give  
7 the attention because we didn't think it mattered that much  
8 because at the end of the day --

9 THE COURT: It matters critically, Mr. Steinberg.

10 MR. STEINBERG: Well, Your Honor, this issue actually  
11 did come up in Deutsch. The first hearing that you had in  
12 Deutsch, people had cited actually to the wrong amendment, you  
13 actually had I think a second hearing on Deutsch where you  
14 analyzed what would be the governing position, and you actually  
15 in the Deutsch decision compared the language that was in the  
16 June 26th, 2009 agreement versus the first amendment and said  
17 no one has explained why the language changed, and therefore it  
18 could have been because it was duplicative or otherwise, but  
19 otherwise you were going to discount it. So this actual, you  
20 know, this actual problem actually took place before in the  
21 Deutsch case and Your Honor handled it that way by just looking  
22 at the actual agreement. And maybe that's the reason why we  
23 didn't give it as much attention in our brief that perhaps it  
24 warranted.

25 But I go back and I also wanted to just address the

1 issue that Your Honor said that you thought that we perhaps  
2 miss-cited the section in our own brief. If you were referring  
3 to page 2 of our brief, we were actually citing to the section  
4 that was in the <sup>Retained</sup> liabilities portion of the sale  
5 agreement as compared to the <sup>Assumed</sup> liabilities and that is  
6 the right quote of how it was written in the <sup>Retained</sup>  
7 liabilities. So I think we got it right in our pleading.

8 But fundamentally what happened is that you had an  
9 improperly started lawsuit in violation of Your Honor's sale  
10 order. And we had deadlines in the state court because those  
11 things go forward. We sent the no stay letter to them, and in  
12 the meantime we had to try to remove this to the JPML and get  
13 it ultimately before Judge Furman (phonetic) in the MDL, and  
14 the statement that is being referred to here has no material  
15 difference as to whether we cite it to the <sup>F</sup>irst <sup>A</sup> amendment or  
16 the <sup>S</sup>econd <sup>A</sup> amendment, the June 26th agreement or the <sup>F</sup>irst  
17 <sup>A</sup> amendment, because the central focus was that it had bankruptcy  
18 court jurisdiction and there was a basis for federal removal,  
19 it relates to the bankruptcy case. New GM was disclaiming  
20 liability and was saying that it should all be ultimately moved  
21 to the MDL where it gets stayed because they're handling  
22 [indiscernible] cases, and it's subject to Your Honor's order.  
23 We waited then for them to file their response to the no stay  
24 pleading and then Your Honor entered the judgment and that  
25 created a separate procedure for the same thing.



1           Once in the, so the answer that was filed was the  
2           answer that was filed in conjunction with something that was  
3           ultimately going to be removed and stayed and ultimately the  
4           answer should not have necessarily been required to be filed  
5           because this action never should have been brought in the first  
6           place. It was a violation of the Deutsch decision. There's  
7           no, there's no judicial admission of anything because there was  
8           no attempt to admit to an older agreement versus a new  
9           agreement.

10           And if Your Honor needs a declaration from someone to  
11           say that it was a mistake and answers could be amended all the  
12           time, and so therefore I don't think in the very early stages  
13           of an improperly led complaint you can say there's a judicial  
14           admission of anything. This would have been amended if this  
15           case would have gone forward, but this case never should have  
16           been brought in the first place.

17           And I think the estate representative is the husband  
18           who was taking care of the wife since the accident in 2005. So  
19           Your Honor had this issue in Deutsch, unfortunately local  
20           counsel made a mistake in responding where the goal was just to  
21           get this to the MDL where it would be stayed while we  
22           simultaneously would be dealing with this in the bankruptcy  
23           court to say that it was subject to Your Honor's order.  
24           There's no difference as to whether we cited the first  
25           amendment or the June 26th amendment for purposes of the over-

1 reaching point, that this was an improperly started lawsuit,  
2 that this was, that there was federal jurisdiction based on the  
3 bankruptcy court on this, and that this matter should be  
4 ultimately removed to the federal court and then to the JPML.

5 Your Honor's decision in Deutsch also said that if  
6 you even relied on the old amendment that it wasn't sure  
7 whether there was any difference. And if you look at their  
8 brief when they decide, when they're focusing on the word  
9 occurrence --

10 THE COURT: I read Deutsch this morning again, I did  
11 not see in there but you can refresh my recollection if I'm  
12 mistaken any suggestion that if the words occurrence had  
13 appeared and the words first occurring had not appeared, that I  
14 had then ruled, assuming it wouldn't have been dictum, that the  
15 conclusion would be the same.

16 MR. STEINBERG: I don't think you said that. I think  
17 on page 5 of the Deutsch decision --

18 THE COURT: Give me a second please. Well I have it  
19 in the B.R. form, is it in the discussion or where?

20 MR. STEINBERG: It is in the discussion, it is after  
21 the heavily blocked quote, and it starts with the paragraph,  
22 but while incidents may be deemed to be somewhat ambiguous.

23 THE COURT: Right. I'm with you now. Basically I  
24 said is I didn't have an evidentiary basis for concluding,  
25 making conclusions as to the reasons for the change.

1 MR. STEINBERG: But the reason why this was even in  
2 your decision was because there was the same mistake that was  
3 made before, people were referring to the June 26th amendment  
4 in an earlier hearing and Your Honor was struggling with would  
5 it have made a difference, why was the change being made. If  
6 people had cited to it properly the first time even in Deutsch,  
7 you never would have had to deal with this discussion, because  
8 the operative agreement is what controls. And that is really  
9 you know we didn't say it in lots of words, sometimes you get  
10 criticized for being verbose, here we basically said there is  
11 one agreement, that is the agreement that is controlling, that  
12 is what Your Honor has to apply in this case.

13 No matter what we said, we could say that the sky is  
14 orange, but the sky is blue, that's what you have to recognize.  
15 Here, there was no attempt to change a different agreement with  
16 respect to a plaintiff who improperly started a lawsuit based  
17 on an accident that took place ten years ago. The rest of the  
18 arguments, I think, Your Honor, I think if, once you find that  
19 there are prepetition non-ignition switch plaintiff, then the  
20 rest flows from the judgment on the due process arguments and  
21 the Court's jurisdiction argument. And so I think really we're  
22 left to, and I think Your Honor has already said that you  
23 believe that Deutsch is applicable ~~of~~ not for this particular  
24 issue where a local counsel had improperly cited to a June  
25 26th, but it wasn't to take any advantage, no court has ruled



1 on this matter. The JPML hasn't even ruled on the removal  
2 action.

3                   And frankly again, and I'll conclude with this, and I  
4 know I've said it a number of times, it all starts with the  
5 fundamental notion that this was an improperly brought lawsuit.  
6 And to say that someone in an answer said something on a  
7 lawsuit that never should have been brought which was a  
8 violation of an injunction I don't think they should be able to  
9 bootstrap that type of argument. Thank you.

10 THE COURT: Mr. Babcock.

11 MR. BABCOCK: New GM filed a 58 page answer, a very  
12 detailed, they went through quotes, it's a very detailed  
13 answer. To suggest that what they say in this very detailed  
14 answer should be disregarded by this Court flies in the face of  
15 what the purpose of an answer is which is either make denials  
16 or make admissions. They could have just said denied, isn't  
17 true, denied, isn't true. But they instead they made the  
18 decision to make admissions. They have not, as Your Honor, as  
19 you pointed out when you, during opposing counsel's -- they  
20 have not cited any authority that says they are excused from  
21 the consequences of what they did, and I mean what the lawyers  
22 in that case did.

23 Your Honor, unless Your Honor has any questions for  
24 us, we'd --

25 THE COURT: Have everybody sit in place for a minute.

1 Gentleman, ladies and gentlemen, I'm ruling that the  
2 Pillars action can proceed against the New GM and that New GM  
3 will have the duty and of course the right to defend it on the  
4 merits without expressing <sup>any view of the</sup> ~~indiscernible~~ merits in the filing <sup>following</sup>  
5 <sup>are</sup> of my findings of fact <sup>and</sup> conclusions of law, and bases for the  
6 exercise of my discretion in connection of this decision,  
7 although I don't think I'm really relying on my discretion in  
8 any way on this.

9 At the outset of oral argument, I recognized, as we all  
10 had to recognize, my Deutsch decision, which if it had been  
11 decided in a vacuum, this controversy had been decided in a  
12 vacuum based upon the proper language of the sale agreement,  
13 would have resulted in a victory for New GM. But the fact that  
14 had the potential ability to change the applicability of the  
15 Deutsch decision was the language under which New GM's  
16 assumption of its liabilities would rest.

17 In Deutsch, as we all know, the key language was  
18 "accidents or incidents first occurring." And the underlying  
19 principal <sup>le</sup> of that was that each word had to be given individual  
20 meaning, although they could overlap. It is not disputed that a  
21 local counsel <sup>for New</sup> through GM said in two separate submissions,  
22 first in a notice of removal and then also in an answer,  
23 perhaps I'm flip-flopping their chronological order, but in two  
24 separate documents, that New GM had assumed liabilities for  
25 "accidents, incidents or other occurrences, and did not rely on

1 the words first occurring or mention the words first occurring.  
2 As I discussed in the Deutsch opinion, first occurring had  
3 significance as well. As I indicated at the outset of oral  
4 argument, this is not a judicial estoppel, the requirements for  
5 judicial estoppel of reliance by the tribunal is missing.  
6 Nevertheless, as Mr. Babcock properly pointed out, it is a  
7 judicial admission, which is similar in some respects, but  
8 different in others. It is not for instance a statement in a  
9 brief. It's a statement in the answer, which has significance.  
10 Answers have to be taken seriously. Although it is true that  
11 answers can thereafter be amended, unless and until they have  
12 been, they stand. Judges need to have the ability to rely on  
13 answers because answers take issues off the table.

14 So then we get to the issue as to whether what GM's  
15 counsel, which is obviously an agent, [indiscernible] should be  
16 <sup>dis</sup> regarded because the litigation shouldn't have been brought in  
17 the first place. Well, lots of litigations were brought in  
18 what we now know to have been violation of my earlier order.  
19 And when I <sup>have</sup> had become aware of that, I have stopped them, I  
20 have stopped them by stays. And it's for that reason that this  
21 litigation is stayed. But it <sup>is</sup> was one thing to say that this  
22 action should be stayed, then later dismissed, and quite a  
23 different <sup>thing</sup> way to say never mind, [indiscernible] vis-a-vis  
24 everything that happened in the first place.

25 I have not ruled to that <sup>e</sup> affect in any of the 22



I've  
1 decisions that previously issued in connection with the GM  
2 case, and I am not of the mind to do that now. Obviously GM  
3 has the ability to ensure that its counsel do their jobs, and  
4 it's not too much to hold GM for the consequences of what its  
5 counsel, who is plainly an agent, did. So having admitted that  
6 New GM is liable for accidents, incidents or other occurrences,  
7 I think have to parse those words. Under the principals of  
8 Deutsch, each word is to be given meaning. Accidents refers to  
9 wrecks, we all know what an accident is. Incidents are,  
10 applies to, something that can include wrecks but can also  
11 include other things. And as I ruled in Deutsch in of the  
12 ~~Pillars~~ <sup>Pellet</sup> actions, repeating or characterizing my ruling in  
13 Deutsch, that covers things like explosions, fires, car running  
14 off the road and the like. Occurrences can overlap with that,  
15 but it can also have some other meaning. And in this instance,  
16 occurrences, which as far as I'm aware has not and will not ever  
17 be the subject of another judicial construction in this case.  
18 But the principals of Deutsch should be construed as meaning  
19 something else, and the arguments made by Pillars' counsel in  
20 its brief that death from that is subject to coverage under  
21 that ambiguity. Of course, the construction of documents when  
22 they're ambiguous necessarily must go against the drafter.  
23 So I'm going to allow this lawsuit to proceed, and  
24 I'm going to state a couple of things for the avoidance of  
25 doubt, although they should be obvious. One is I reiterate for



1 the 900th time that I have subject matter jurisdiction over  
2 this dispute. As is apparent from everything that I've said,  
3 this applies only to this particular judicial admission in this  
4 particular wrongful death case, and has no bearing on anything  
5 that I ruled on April 15th or on the Gary Reller (phonetic)  
6 matters [indiscernible]. It does however, mean that New GM has  
7 to defend this wrongful death case. And if it doesn't like  
8 defending wrongful death cases when its local counsel admit  
9 things that maybe they shouldn't have been admitted to, it  
10 should supervise its counsel more carefully.

11 That summarizes my rulings. If New GM really wants  
12 to appeal this, I reserve the right to issue a written opinion.  
13 But as you all well know, I've got so many things beyond that  
14 to deal with in GM (and for that matter other cases on my watch),  
15 that I'm not going to write on this unless I need to.

16 Mr. Babcock, you or your co-counsel can settle an  
17 order in accordance with this ruling. Not by way of  
18 rearguments, are there any questions?

19 MR. STEINBERG: Your Honor, will we have, can we have  
20 the opportunity to make a submission, and I don't know whether  
21 this is true or not, I would need to verify that at the time to  
22 answer or amend, we had a right to amend the answer, that this  
23 is not a judicial admission to give further briefing.

24 THE COURT: There was plenty of time to focus on  
25 these issues before today. That's my ruling.

1 MR. STEINBERG: All right.

2 THE COURT: Mr. Steinberg, I have a zillion things on  
3 my watch and I have to rely on lawyers dealing with issues in a  
4 timely way. We can't have do-overs after I've ruled. I had  
5 the same issue with a motion for rearguments now which is in  
6 substance a do-over after I've ruled, I'm not going to invite  
7 even more stuff of that character. Anything else?

8 MR. BABCOCK: Your Honor, I'm not familiar with how  
9 the Court handles its orders.

10 THE COURT: Do you want to stand please? I take it  
11 in most of the courts you would stand when you're talking to a  
12 Judge?

13 MR. BABCOCK: I'm sorry, Your Honor, I wasn't being  
14 disrespectful. Okay, at this point, the lawyers, would GM be  
15 submitting a proposed order? Is that, do I understand what  
16 your instruction was or do you want me to prepare an order?

17 THE COURT: I said you are to settle an order. We  
18 have local court rules in this Court to deal with the  
19 settlement of orders.

20 MR. BABCOCK: Okay, Your Honor.

21 THE COURT: Okay. Anything else? Have a good day.  
22 We're adjourned.

23 MR. WEISFELNER: Your Honor, I apologize. This is a  
24 procedural housekeeping issue. And let me see if I can't state  
25 succinctly what the issue is.